

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Eric M Larson, et al.,

No. CV-21-02221-PHX-JAT

10 Plaintiffs,

ORDER

11 v.

12 State Farm Fire and Casualty Company, et
13 al.,

14 Defendants.

15 Pending before the Court is Plaintiffs Courtney and Eric Larson's ("Plaintiffs")
16 Motion to Remand. (Doc. 11). Defendant State Farm Fire and Casualty Company
17 ("Defendant") filed a Response, (Doc. 12), and Plaintiffs filed a Reply. (Doc. 17). For the
18 reasons that follow, the Court grants Plaintiffs' Motion to Remand.

19 **I. BACKGROUND**

20 Plaintiffs are Arizona homeowners insured by Defendant. (Doc. 11 at 3). On
21 December 1, 2019, Plaintiffs noticed water leakage in their kitchen. (Doc. 6 at 2). Plaintiffs
22 reported a claim to Defendant, and Defendant conducted an inspection, found the damage
23 to be of a type excluded from coverage, and denied Plaintiffs' claim. (*Id.*)

24 Plaintiffs then appointed an appraiser who estimated \$46,866.62 in damage to
25 Plaintiffs' home. (Doc. 11-1 at 2). The parties dispute whether this appraisal bound
26 Defendant to award Plaintiffs the appraisal value. (*Compare* Doc. 6 at 2 *with* Doc. 11 at 3).
27 Notwithstanding this dispute, Defendant covered a portion of the damage to Plaintiffs'
28 home, but not the full value that the appraiser estimated. (*Id.*)

1 Plaintiffs filed suit in Maricopa County Superior Court on December 6, 2021,
 2 alleging three counts against Defendant. Count One alleges a breach of insurance contract,
 3 seeking to recover the remainder of Plaintiffs' insurance claim and associated costs
 4 incurred from the lack of coverage. (Doc. 1 at 15). Count Two alleges a breach of implied
 5 covenant of good faith and fair dealing. (*Id.* at 16). Count Three calls for punitive damages
 6 for Defendant's "outrageous, reprehensible, . . . willful[], malicious[]" conduct. (*Id.* at 18).

7 Defendant timely removed this action pursuant to 28 U.S.C. § 1441. (Doc. 1). Per
 8 the Court's order, Defendant then filed a supplement to the notice of removal asserting
 9 diversity of citizenship as the basis for federal subject matter jurisdiction. (Doc. 5; Doc. 6).
 10 Defendant alleges that Plaintiffs are Arizona residents and Defendant is incorporated and
 11 has its principal place of business in Illinois, satisfying the diversity of citizenship
 12 requirement. (Doc. 6 at 3). Defendant also alleges that the amount in controversy
 13 requirement of at least \$75,000 is satisfied.

14 Plaintiffs filed a motion to remand on January 28, 2022, arguing that the Court does
 15 not have subject matter jurisdiction. (Doc. 11). While they do not contest that the parties
 16 are citizens of different states for purposes of diversity jurisdiction, Plaintiffs argue that the
 17 amount in controversy does not exceed \$75,000. Defendant objects to this motion. (Doc.
 18 12).

19 **II. MOTION TO REMAND**

20 The parties do not contest that they are citizens of different states for purposes of
 21 diversity jurisdiction. Thus, the Court only analyzes whether Defendant has failed to show
 22 by a preponderance of the evidence that Plaintiffs' amount in controversy exceeds \$75,000.

23 **A. Legal Standard**

24 Pursuant to 28 U.S.C. § 1332, "district courts shall have original jurisdiction of all
 25 civil actions where the matter in controversy exceeds the sum or value of \$75,000,
 26 exclusive of interests and costs, and is between . . . citizens of different States[.]" 28 U.S.C.
 27 § 1332(a)(1).

28 The removal statute, 28 U.S.C. § 1441, provides, in pertinent part: "[A]ny civil

1 action brought in a State court of which the district courts of the United States have original
 2 jurisdiction, may be removed by the defendant . . . to the district court of the United States
 3 for the district and division embracing the place where such action is pending.” 28 U.S.C.
 4 § 1441(a). Courts strictly construe the removal statute against removal jurisdiction. *See*
 5 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Gaus v. Miles, Inc.*,
 6 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong presumption’ against removal jurisdiction
 7 means that the defendant always has the burden of establishing that removal is proper.”
 8 *Gaus*, 980 F.2d at 566 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064
 9 (9th Cir. 1979)).

10 “In a removed case, . . . the plaintiff chose a state rather than federal forum. Because
 11 the plaintiff instituted the case in state court, ‘there is a strong presumption that the plaintiff
 12 has not claimed a large amount in order to confer jurisdiction on a federal court[.]’” *Singer*
 13 *v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 375 (9th Cir. 1997) (quoting *St. Paul*
 14 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 290 (1938)). “Where the complaint
 15 does not demand a dollar amount, the removing defendant bears the burden of proving by
 16 a preponderance of the evidence that the amount in controversy exceeds [\$75,000].” *Id.* at
 17 376. “Under this burden, the defendant must provide evidence establishing that it is ‘more
 18 likely than not’ that the amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental*
 19 *Life Insurance Co.*, 102 F.3d 398, 404 (9th Cir. 1996). “[R]emoval ‘cannot be based simply
 20 upon conclusory allegations’ where the [complaint] is silent” as to the dollar amount of
 21 damages the plaintiff seeks. *Singer*, 116 F.3d at 377 (citing *Allen v. R & H Oil & Gas Co.*,
 22 63 F.3d 1326, 1335 (5th Cir. 1995)). Yet the inquiry into the amount in controversy is not
 23 confined to the face of the complaint. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th
 24 Cir. 2004).

25 **B. Analysis**

26 The amount in controversy is not facially clear from Plaintiffs’ complaint.
 27 Accordingly, it is Defendant’s burden to prove by a preponderance of the evidence that the
 28 amount in controversy exceeds \$75,000. *See Singer*, 116 F.3d at 376. Here, the Court finds

1 that Defendant has not met its burden.

2 **1. Plaintiffs' Tier Two Designation**

3 Defendant argues that Plaintiffs' Tier Two discovery designation indicates that the
 4 amount in controversy exceeds \$75,000. (Doc. 6 at 4). This argument is unavailing.

5 Arizona's tier system is used for discovery purposes—"to make discovery occur in
 6 a manner that is proportional" to the complexity of the case. *See Advisory Committee Note,*
 7 Ariz. R. Civ. P. 26.2. Therefore, "while Plaintiff[s'] tier selection is some evidence of
 8 [their] amount in controversy, it is not enough to prove by a preponderance of the evidence
 9 that Plaintiff[s'] damages in the action exceed \$75,000." *Rieke v. ManhattanLife Assurance*
 10 *Co. of Am.*, No. CV-20-00724-PHX-GMS, 2020 WL 3056123, at *1 (D. Ariz. June 9,
 11 2020).

12 Moreover, Tier Two designations merely contemplate a claim for damages
 13 exceeding \$50,000 and less than \$300,000. Ariz. R. Civ. P. 26(c)(3)(B). Thus, Plaintiffs'
 14 tier designation "does nothing more than establish that the amount in controversy is likely
 15 more than \$50,000." *Rives v. Mrs. Gooch's Nat. Food Mkts. Inc.*, No. CV-21-01186-PHX-
 16 DLR, 2021 WL 3847104, at *1 (D. Ariz. Aug. 27, 2021) (quoting *Ferguson v. First Am.*
 17 *Specialty Ins. Co.*, No. CV-09-01581-PHX-JAT, 2009 WL 4154653, at *3 (D. Ariz. Nov.
 18 23, 2009)). Accordingly, Plaintiffs' tier designation alone is insufficient to demonstrate
 19 that the amount in controversy exceeds \$75,000.

20 **2. Plaintiffs' Settlement Negotiations**

21 Defendant next argues that Plaintiffs' settlement offer proves that the amount in
 22 controversy requirement is met. Defendant argues that Plaintiffs previously asserted that
 23 Count One alone was worth \$72,500, implying that the total amount in controversy on all
 24 claims would exceed \$75,000. (Doc. 12 at 5–6).

25 The Court may consider this correspondence as some evidence of the amount in
 26 controversy. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018).
 27 But, for reasons stated below, the Court finds this evidence unpersuasive because an
 28 estimated value of \$72,500 for Count One alone does not reflect a reasonable estimate of

1 Plaintiffs' Count One claim. Additionally, the Court finds that Plaintiffs' "opening
 2 demands" do not accurately reflect the amount in controversy when Plaintiffs later offered
 3 to settle for a lower amount. *See Carr v. Esurance Ins. Co.*, No. 09-0667-PHX-JAT, 2009
 4 WL 2132699, at *3 (D. Ariz. July 16, 2009) ("The fact that the amount was an 'opening
 5 demand' and subject to lower counteroffers further undermines Defendant's argument [that
 6 the initial amount reflects the amount in controversy].").

7 On the other hand, the Court finds that Plaintiffs' settlement offer of \$66,500
 8 (\$31,000 in policy benefits and \$12,500 in attorneys' fees for Count One, and \$23,000 for
 9 extra-contractual claims in Counts Two and Three) is relevant evidence that Plaintiffs
 10 believe the amount in controversy is less than \$75,000. "A settlement letter is relevant
 11 evidence of the amount in controversy if it appears to reflect a reasonable estimate of the
 12 plaintiff's claim." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *see also Rieke*,
 13 2020 WL 3056123, at *2 (finding plaintiff's offer of judgment for \$65,000 to be relevant
 14 evidence of the amount in controversy); *Brown v. Bankers Life & Cas. Co.*, No. CV-09-
 15 1459-PHX-GMS, 2009 WL 2914215, at *4 (D. Ariz. Sept. 8, 2009) (finding plaintiff's
 16 offer of judgment for \$70,000 to be relevant evidence of the amount in controversy).

17 Plaintiffs' Count One settlement offer is for \$31,000 in policy benefits and \$12,500
 18 in attorneys' fees. In Count One, Plaintiffs claim that Defendant "wrongfully deducted a
 19 total of \$31,695.40 awarded as water damage." (Doc. 11 at 3). Thus, the Court finds that
 20 Plaintiffs' settlement offer of \$43,500 for Count One more closely reflects "a reasonable
 21 estimate of plaintiff[s'] claim[s]." *Cohn*, 281 F.3d at 840. Accordingly, the Court finds that
 22 Defendant has not sufficiently demonstrated that Plaintiffs' assertion that Count One was
 23 worth \$72,500 is relevant evidence for the total amount in controversy.

24 The Court is similarly unpersuaded that Counts Two and Three show that Defendant
 25 has satisfied its burden in meeting the amount in controversy requirement. Defendants
 26 argue that Plaintiffs' Complaint alleges facts analogous to previous cases in which the
 27 amount in controversy exceeded \$75,000. (Doc. 12 at 7-9).

28 The Ninth Circuit Court of Appeals has found that a removing defendant may point

1 to verdicts and settlements in “similar” cases as evidence that the amount in controversy
 2 exceeds \$75,000. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). What
 3 constitutes a sufficiently “similar” case is not clear from precedent, so courts must exercise
 4 their discretion. *See Haire v. Liberty Ins. Corp.*, No. CV-20-00686-PHX-DWL, 2020 WL
 5 5088071, at *4 (D. Ariz. Aug. 28, 2020).

6 In its response, Defendant focuses much of its analysis on *Hawkins v. Allstate Ins. Co.*, 733 P.2d 1073 (Ariz. 1987), a case in which insureds brought claims of bad faith
 7 against their insurer and obtained a \$3.5 million jury verdict. (Doc. 12 at 7–9). Defendant
 8 points to similarities between the facts that led to the jury verdict in *Hawkins* and the facts
 9 that Plaintiffs allege here. (*Id.*) But *Hawkins* differs from the present case in a crucial way:
 10 the plaintiffs in *Hawkins* never offered to settle their bad faith claims for a specified dollar
 11 amount. *See generally Hawkins*, 733 P.2d 1073. Here, Plaintiffs explicitly offered to settle
 12 Counts Two and Three for \$23,000. (*See* Doc. 11 at 9). Thus, the Court finds that *Hawkins*
 13 and the other cases cited by Defendant¹ are not sufficiently “similar” to the present case to
 14 be persuasive to use to find an amount in controversy exceeding \$75,000.
 15

16 For the foregoing reasons, Defendant has not met its burden of establishing by a
 17 preponderance of the evidence that the amount in controversy exceeds the \$75,000
 18 jurisdictional requirement. Plaintiffs’ Motion to Remand is granted.

19 **III. ATTORNEYS’ FEES**

20 Plaintiffs request attorneys’ fees for Defendant’s removal. The Court may award
 21 attorneys’ fees “where the removing party lacked an objectively reasonable basis for
 22 seeking removal. Conversely, when an objectively reasonable basis exists, fees should be
 23 denied. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

24 Although the Court grants Plaintiffs’ Motion to Remand, the Court does not find
 25 award of attorneys’ fees proper here. Defendant had an objectively reasonable argument

26 ¹ In its previously filed Supplement to Notice of Removal, Defendant cites several other
 27 cases that Defendant argues are similar to the present case. (Doc. 6 at 12–15). While these
 28 cases may have some analogous facts to Plaintiffs’ allegations, none of the cases include
 an explicit offer to settle all claims for less than \$75,000. (*Id.*) Accordingly, the Court finds
 that none of these other cases are sufficiently similar to be persuasive.

1 for removal. The complaint does not request a specific amount of damages and it is
2 objectively reasonable to argue that attorneys' fees and punitive damages from Plaintiffs'
3 claims satisfy the jurisdictional requirements. *See Welsh v. N.H. Ins. Co.*, 843 F. Supp. 2d
4 1006, 1011 (D. Ariz. 2012) (finding the same). Therefore, Plaintiffs' request for attorneys'
5 fees is denied.

6 **IV. CONCLUSION**

7 Defendant fails to establish by a preponderance of the evidence that Plaintiffs'
8 amount in controversy exceeds \$75,000.

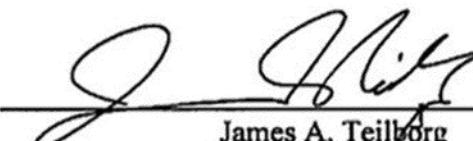
9 For the foregoing reasons,

10 **IT IS ORDERED** that Plaintiffs' request for attorneys' fees (Doc. 11) is **DENIED**.

11 **IT IS FURTHER ORDERED** that Plaintiffs' Motion to Remand (Doc. 11) is
12 **GRANTED**. The Clerk of Court shall remand this case to the Maricopa County Superior
13 Court, without further order of this Court.

14 Dated this 12th day of April, 2022.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
Senior United States District Judge